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Decision No. 59745

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, Complainant, vs. GENERAL TELEPHONE COMPANY OF CALIFORNIA, a corporation, Defendant. | Case No. 6301 |

Arthur T. George and Pillsbury, Madison and Sutro by Charles B. Renfrew, for complainant.
Albert M. Hart, for defendant.
J. J. Deuel and Ralph Hubbard by J. J. Deuel, for California Farm Bureau Federation; Neal C. Hasbrook, for California Independent Telephone Association; Glenn E. Mathis, for the Moulton Ranch; Eugene W. Bell and Ivan P. Hanson, for Laguna Niguel Corporation; Allen F. Schmeltz, for First Western Bank and Trust Company; interested parties.
Melvin E. Mezek, for the Commission staff.

## O P I N I O N

On July 6, 1959 a complaint was filed by The Pacific Telephone and Telegraph Company, hereinafter referred to as complainant, against the General Telephone Company of California, hereinafter referred to as defendant. On July 27, 1959, defendant filed its answer to this complaint.

A public hearing was held on this matter on October 6, 1959 at Los Angeles, before Examiner William L. Cole at which time the matter was submitted.

Complaint and Answer

The complainant alleges that it has for many years been providing telephone service in Santa Ana and San Juan Capistrano and territory adjacent thereto in Orange County through

its exchanges designated Santa Ana and San Juan Capistrano. It is alleged that these two exchanges are contiguous to one another and each is in part contiguous to defendant's Laguna Beach Exchange and that there is located between these three exchanges certain territory that is not served by any telephone utility and which prior to May 15, 1959 had not been filed upon by either the complainant or the defendant.

It is alleged that on May 15, 1959, defendant, without notice to complainant, filed its advice letter with the Commission to expand the easterly boundary of its Laguna Beach Exchange to include this unfiled territory, that this tariff filing was to become effective 30 days thereafter on June 30, 1959, and that complainant's first knowledge of this filing was received on June 19, 1959. It is alleged that in February of 1959, complainant received applications for service in the unfiled territory.

It is further alleged that for many years the complainant and defendant have operated under a working arrangement under which the parties have notified each other of plans for enlarging exchange areas to include unfiled territory where such territory was contiguous to the territories of each of the companies, that under this arrangement a common effort has been made to provide service in the unfiled territory through the company that, in the public interest, should provide the service, that the defendant made its tariff filing without notice to complainant, that the defendant's advice letter does not state any public interest considerations that suggest or require that it incorporate the unfiled territory in its Laguna Beach Exchange, and that there are no such public interest considerations.

It is further alleged, in effect, that there are numerous public interest considerations which require that the complainant serve the territory in question. Concurrently with the filing of the complaint, the complainant filed its own advice letter to include the territory in question within the Trabuco district area of its Santa Ana Exchange, being Advice Letter No. 7390, filed July 6, 1959, on which the Commission has taken no action thus far because increased rates are technically involved.

The complainant prays that the Commission make its order pursuant to Sections 455, 701, 1001 and 1702 of the Public Utilities Code, canceling the tariff filing of the defendant, and accept and make effective the tariff filing of the complainant and for such other and further relief as may be deemed necessary.

The defendant's answer admits that it made the alleged tariff filing without notice to the complainant and that the filing does not expressly state any public interest considerations. In effect, the answer denies most of the other allegations. The answer alleges affirmatively that public interest considerations are implicit in the mere filing of the advice letter, that the filing was duly made pursuant to Section 1001 of the Public Utilities Code and General Order 96, that the filing has been accepted by the Commission, and that the defendant is capable of serving the area in question now and in the future. The answer requests that the complaint be dismissed.

Jurisdiction

At the time of the hearing, the defendant made a motion to dismiss the complaint on the grounds that it failed to state a cause of action under the Public Utilities Code or the rulings of the Commission. The complainant in effect concedes that the complaint

does not allege that the defendant has violated any provision of the law or order or rule of the Commission. Complainant maintains that the complaint is merely the procedural vehicle by which the matter is brought before the Commission to determine which company should provide service in the area in question so as to best meet the public interest.

It is the Commission's conclusion that it has the jurisdiction to entertain this complaint.

Section 455 of the Public Utilities Code provides that whenever any schedule stating an individual or joint rate, classification, contract, practice, or rule, not increasing or resulting in an increase in any rate, is filed with the Commission, it may "either upon complaint or upon its own initiative ... enter upon a hearing concerning the propriety of such rate, classification, contract, practice or rule." It appears that this quoted provision applies in those cases where a complaint is filed prior to the effective date of the schedule in question. However, the second paragraph of this section provides:

"All such rates, classifications, contracts, practices, or rules not so suspended shall become effective on the expiration of 30 days from the time of filing thereof with the commission or such lesser time as the commission may grant, subject to the power of the commission, after a hearing had on its own motion or upon complaint, to alter or modify them." (Emphasis added)

There can be no question that the tariff schedules filed by the defendant constitute schedules "stating an individual or joint rate, classification, contract, practice, or rule". While at first glance it might appear that the filing by the defendant merely increases the service area of the Laguna Beach Exchange, in effect the filing is setting rates and classifications for all potential

subscribers of service in the newly filed territory. There is no question that the Commission has the jurisdiction "upon complaint" to enter upon a hearing concerning the propriety of the filings of the defendant in this matter.

Indeed, quite apart from the provisions of Section 455, the Commission has the authority and jurisdiction to entertain this present complaint by virtue of the provisions of Section 701 of the Public Utilities Code which provides that the Commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in the Public Utilities Act or in addition thereto, which are necessary and convenient in the exercise of such power or jurisdiction.

The defendant's motion to dismiss is hereby denied.

Findings and Conclusions

Based upon all the evidence of record in this matter, the Commission makes the following findings and conclusions:

1. That a certain area consisting of approximately 12 square miles lying between the Santa Ana and San Juan Capistrano exchanges of the complainant and the Laguna Beach Exchange of the defendant had, prior to May 15, 1959 not been served by any public utility telephone corporation.

2. That approximately 10 square miles of this unfiled territory lies in what is known as the Moulton Ranch and that the balance of the unfiled territory constitutes property belonging to the Laguna Niguel Corporation.

3. That in February, 1959, the complainant received two applications for service from persons residing in the Moulton Ranch and that from February to June, 1959, the complainant studied the feasibility of providing service to the unfiled territory.

4. That on May 15, 1959, the defendant, without prior notice to the complainant, filed with the Commission an advice letter including the unfiled territory within its Laguna Beach Exchange and that this advice letter became effective June 15, 1959.

5. That on July 6, 1959, the complainant filed its advice letter including the unfiled territory in its Trabuco District area of its Santa Ana Exchange.

6. That at the present time one group of ranch buildings of the Moulton Ranch lies within and is being serviced by complainant's Santa Ana Exchange.

7. That at the present time the complainant has existing plant within a mile and a half of the location of the two applicants for service.

8. That from a central point of the area in question the airline distance to Santa Ana is 15.32 miles, the airline distance to Laguna Beach is 4.76 miles, and the airline distance to San Juan Capistrano is 5.70 miles.

9. That the only road of access at the present time into the unfiled territory runs through the complainant's Santa Ana Exchange.

10. That the unfiled territory is separated from the defendant's Laguna Beach Exchange by a rugged coastal mountain range.

11. That the location of fire and police protection and other emergency and other public services that are relied upon by residents in the territory in question are located in Santa Ana and Orange in the complainant's service area.

12. That children from the Moulton Ranch properties would attend elementary and high schools in either El Toro or San Juan Capistrano School Districts. Both of these school districts are

within the local calling area of the complainant's Trabuco District area of the Santa Ana Exchange.

13. That the local calling area for stations in the complainant's Trabuco District area of the Santa Ana Exchange includes all telephones served by the Santa Ana Exchange, the Orange Exchange, and the San Juan Capistrano Exchange. At the present time, these exchanges have approximately 72,000 telephones.

14. That the local calling area for stations in the defendant's Laguna Beach Exchange is Laguna Beach and Newport Beach exchanges.

15. That at the present time the rate for a residence suburban line flat rate service in the complainant's Trabuco District area of its Santa Ana Exchange is $4.10 per month. If the two applicants for service were to be included in this district area, they would also be assessed line extension charges by the complainant and with higher grades of service there also would be monthly mileage charges.

16. That if the two applicants were included in the defendant's Laguna Beach Exchange, the base individual line residence flat rate service would be $5.30 per month plus monthly mileage charges. In addition there would be a nonrecurring line extension charge.

17. That the cost to the complainant of extending its service to the two applicants would be approximately $2,900. The defendant did not have any estimate as yet as to what its construction costs would be.

18. That to serve the two applicants, the complainant would have to extend its present plant approximately one and one half miles. The defendant in order to serve the two applicants would have to extend its present plant approximately three miles.

19. That the portion of the territory in question belonging to the Laguna Niguel Corporation is but a small portion of a larger holding belonging to that land development company which it plans to develop into a new community. Most of the property, belonging to this company, that will be used to make up this new development is presently located in the complainant's San Juan Capistrano Exchange area.

20. That for many years the development of the Laguna Niguel Corporation will be a residential community looking to the north and east for its jobs and services. This area may never become a truly self-contained community.

21. That the representatives of the Laguna Niguel Corporation were in favor of the complainant serving the territory in question.

22. That the representatives of the Moulton Ranch properties were in favor of the complainant serving the territory in question.

23. That the representative of California Farm Bureau Federation was in favor of the territory in question being served by the complainant.

24. That for many years the dominant community of interest for the present and future residents of the territory in question will be with the Santa Ana and San Juan Capistrano area.

Discussion

The matter before the Commission presents the question of which of two public utility telephone companies should be allowed to serve contiguous territory which has never been served previously by a telephone utility.

The defendant contends that it should be allowed to serve for two reasons. One reason is the contention that the territory in question will become a self-contained community in the future and that the defendant will be able to serve it as well as the complainant. The second reason is that the defendant filed on the area before the complainant did.

With respect to the first contention, the record does not show that the area in question will become a self-contained community in the foreseeable future and for this reason this contention is without merit. However, the defendant's other contention must be accorded great consideration. Normally, a utility that takes the initiative in attempting to serve previously unserved areas should be favored. In the present case, however, it is the Commission's opinion, and it so finds and concludes, that the public interest so overwhelmingly favors service in the area in question by the complainant, that the considerations in favor of the first to file are overcome and that the complainant should be allowed to serve the area in question.

Therefore, the Commission finds and concludes that public convenience and necessity requires that an order be issued substantially granting the request of the complainant; that any increases in rates and charges as may result are justified; and that present rates, insofar as they differ from those herein prescribed, for the future are unjust and unreasonable.

## O R D E R

A complaint having been filed, a public hearing having been held thereon and the Commission being duly informed,

IT IS ORDERED:

1. That General Telephone Company of California shall not furnish telephone service in that expanded portion of Laguna Beach Exchange filed by Advice Letter No. 1019 within thirty days after the effective date of this order and thereafter shall desist from accepting applications for service from prospective subscribers in such area.

2. That General Telephone Company of California shall, within thirty days after the effective date of this order and in conformity with General Order No. 96, file tariffs withdrawing that expanded portion of Laguna Beach Exchange filed by Advice Letter No. 1019, as set forth on Cal. P.U.C. Sheet No. 7991-T, and restoring the boundary of Laguna Beach Exchange to that which was effective on Cal. P.U.C. Sheet No. 4983-T, and to make such revised tariffs effective on not less than five days' notice to this Commission and to the public.

3. That after the effective date of this order The Pacific Telephone and Telegraph Company shall serve the area adjacent to and south of the Santa Ana Exchange as shown by Advice Letter No. 7390; and the filing under Advice Letter No. 7390, made on July 6, 1959, shall become effective on the effective date of this decision.

The Secretary is directed to cause copies of this order to be served upon defendant, and the effective date of this decision shall be twenty days after such service.

Dated at San Francisco, California, this 24th day of February, 1960.

President

Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.